

PLANNING BOARD MEETING – June 22, 2016

PRESENT: Mark Pease, Chairman; Robert Donnelly, Vice Chairman; Philip Greene; George Nangle; Philippe Thibault; Elizabeth Ware, Community Development Director; Michael Buxton, Director of Public Works; Mark Hamel, Town Engineer and Lisa Wagner, Recording Secretary

Chairman Pease opened the meeting at 7:00 p.m. in the Conference Room at Town Hall and the Pledge of Allegiance was recited.

MINUTES:

Meeting held on May 25, 2016: Mr. Nangle motioned to approve. Mr. Donnelly seconded. Motion passed unanimously.

Meeting held on June 13, 2016: Mr. Greene motioned to approve. Mr. Nangle seconded. Motion passed unanimously.

CLEMENT ROAD/DRACO HOMES/ANR PLAN:

Doug Dooley of Draco Homes appeared before the Board and presented an ANR plan showing Lot A being subdivided into Lot A1 and Lot A2. Chairman Pease asked for Ms. Ware's input on this plan. Ms. Ware noted the roadway shown as Hawk Ridge Road is an 8-lot subdivision located in Pelham, New Hampshire, which was approved around 2012. The developer obtained a variance from the Town of Pelham due to the need to go through another town to get to the subdivision and in exchange for the variance, the road is private and owned, maintained and operated by a private homeowner's association. Ms. Ware had no issue with Lot A2, however; she questioned whether the Board had jurisdiction on Lot A1 with frontage in Pelham. After speaking with the Pelham Town Planner and Town Counsel, Ms. Ware stated Attorney Hall is of the opinion that a notation could be put on the plan stating, "The Dracut Planning Board is not making a determination on either frontage or access for Lot A1 that appears to have frontage and access in Pelham, New Hampshire."

In additional review, Chairman Pease had some concerns as to whether the plan was considered a subdivision and if Lot A1 is a buildable lot or if the developer would label the lot as not a buildable lot. Mr. Dooley indicated the intent is for the lot to be buildable. Chairman Pease mentioned Town Counsel's suggestion of adding the statement to the plan, which would leave it in the hands of the Pelham Planning Board and the Building Inspector in Dracut. Mr. Thibault inquired if there is any inter-municipality agreement between the 2 Towns. Ms. Ware does not know of any, although she was informed there would be no school bus service, nor are there any water or sewer provisions. Mr. Dooley believes there are other instances where a similar situation occurred and precedence was set. Chairman Pease would like proof of this and asked for Mr. Hamel's opinion on this matter. Mr. Hamel did not have any Engineering issues with the plan, but finds it to have a unique legal issue given that the roadway is entirely in New Hampshire and feels there is a hardship due to the proximity, which might require an appeals process. Mr. Nangle asked if the lots have been built on in Pelham. Mr. Dooley stated they were not, however; the roadway was put in up to the binder coat.

PLANNING BOARD MEETING – June 22, 2016

Mr. Greene mentioned a similar situation off of Marsh Hill Road. Mr. Hamel indicated Mr. Dooley alluded to Melody Lane being the same, but the frontage is in Dracut and the access is from Pelham. Ms. Ware reiterated that the notation previously referred to from Town Counsel could be put on the plan and then it would be addressed by the Pelham Planning Board and the Building Inspector in Dracut. Chairman Pease asked if that was acceptable with the applicant. Mr. Dooley confirmed it was acceptable.

Mr. Greene motioned to approve the ANR plan with the note, "The Dracut Planning Board is not making a determination on either frontage or access for Lot A1 that appears to have frontage and access in Pelham, New Hampshire." Mr. Nangle seconded. Motion passed unanimously. For the record, Ms. Ware noted the decision should be filed with the Town Clerk's office tomorrow due to the deadline. Chairman Pease asked the Recording Secretary to file said decision.

Chairman Pease took the following appointment out of order.

15 PEABODY AVENUE/DAVID ROWLETT/SPECIAL PERMIT FOR A CHANGE OF USE (SIGN SHOP TO BUILDING TRADE SHOP)/PUBLIC HEARING (CON'T):

For the record, Chairman Pease stated Attorney Michael Fadden submitted a letter on behalf of the applicant requesting to withdraw the application for the special permit and a petition was filed from several abutters or residents, who were concerned about the project and were not in favor of it going forward.

Mr. Greene motioned to allow the applicant to withdraw the special permit application without prejudice. Mr. Donnelly seconded. Motion passed unanimously (4-0). Mr. Thibault abstained. Mr. Greene motioned to close the public hearing. Mr. Nangle seconded. Motion passed unanimously (4-0). Mr. Thibault abstained.

200 LOON HILL ROAD/RICHARRY INVESTMENTS/SPECIAL PERMIT TO CONSTRUCT 2-SINGLE FAMILY HOMES IN THE FLOOD PLAIN DISTRICT/ PUBLIC HEARING:

Chairman Pease opened the hearing and read aloud the Legal Notice, which was advertised in the Lowell Sun on Wednesday, June 8, 2016 and again on Wednesday, June 15, 2016.

Kenneth Lania of Cornerstone Land Consultants appeared before the Board on behalf of the applicant, Richard Lannan of Richarry Investments, LLC and presented a plan showing 2 proposed single-family homes located in the Flood Plain District. The vacant parcel contains approximately 11.6 acres of land and has been subdivided into 2 lots with Lot 1 having 3.2 acres and Lot 2 having 8.2 acres. Mr. Lania mentioned this comes under the Wetland Protection Act and was approved by Conservation along with a Superseding Order of Conditions issued by the Department of Environmental Protection (DEP), as well as being reviewed by the Army Corps of Engineers; which resulted in a plan designed to address the flood plain compensation.

PLANNING BOARD MEETING – June 22, 2016

Furthermore, Mr. Lania indicated Lot 2 impacts a small wetland area of 912 cubic feet, which is proposed to be filled with a compensatory storage area of 1296 cubic feet and as part of the approval by the DEP Superseding Order of Conditions; it is required that a Wetlands Monitor, an Environmental Monitor and a Construction Manager be on site to oversee the project.

In review, Chairman Pease noted the Public Works Director submitted a letter, which stated no snow is allowed to be deposited in the public way and the Deputy Fire Chief requested that automatic residential sprinkler systems be installed in each dwelling. Ms. Ware added that there were limited comments from Town staff, due to the strict Superseding Order of Conditions issued by the DEP and the property is within the National Heritage Endangered Species Program, which requires the applicant to comply with all of the conditions of their program and also designating protected areas on this property for various creatures being predominantly turtles. Ms. Ware further mentioned a recent meeting with some abutters, who raised some concerns about the impact of the development along with the amount of wetlands on the property and she recommended the Board consider scheduling a site visit with the centerline of the driveways staked, as well as the location of the houses.

Chairman Pease mentioned that should the Board grant the Special Permit, it must be done in accordance with the extra findings referenced in Section 2.13.50. Mr. Lania found those acceptable. Mr. Greene inquired where the Board stands with the ANR plan and the DEP. Chairman Pease stated that the Superseding Order of Conditions will be enforced by the DEP and there are no issues with the ANR approved at the last meeting. Mr. Greene commented that the Board cannot change those conditions. Chairman Pease and Ms. Ware confirmed the DEP findings cannot be changed. Mr. Lania reviewed the extensive process this proposal has been subject to over the past 2 years and noted only 1.6 acres of the 11.6 acre parcel will be developed with the remaining 10 acres to be given to National Heritage and held in a Conservation Restriction Easement. Chairman Pease asked for Mr. Hamel's input on this proposal. Mr. Hamel stated the area being filled is about a trailer dump of material and he feels the 47 stipulations issued by DEP are well beyond the Town By-Laws and any determination of the Conservation Commission. Mr. Donnelly questioned whether the applicant has addressed Section 2.13.32, #8. Mr. Lania stated this section concerns allowed uses, therefore; it does not apply in this case and he is before the Board for a Special Permit under Section 2.13.50.

Chairman Pease asked if anyone in attendance had a question or comment.

Arthur Conroy of 193 Loon Hill Road mentioned a serious concern for any future homeowner at this proposed site given the existing conditions including beaver dams, frequent mosquito spraying and repeated flooding in this vicinity.

Kathleen Bourdelais of 193 Loon Hill Road spoke in length about the numerous wildlife in this area and feels the vast wetlands should limit the development of any homes on this site.

PLANNING BOARD MEETING – June 22, 2016

Mr. Lania mentioned the involved process with National Heritage and the measures that will be taken in protecting the many wildlife in this area. The proposed homes are situated on 1.6 acres of upland area and the remaining 10 acres will be deed restricted, which will prevent the homeowner from any other construction. Mr. Thibault inquired about the post and rail fencing shown on the plan and if it is being installed around the entire perimeter of the restriction easement. Mr. Lania confirmed it will be, as well as some mesh material at the lower portion of the rail in order to keep any endangered species from entering the developed area.

In further discussion, Chairman Pease agreed with Ms. Ware and would like to visit the site. Mr. Lania noted the proposed construction of 2-single family homes has been reviewed extensively and he was hopeful the Board could act on this permit. Ms. Ware noted a decision has not been drafted at this time and suggested continuing to the next meeting to put together the findings for the Board to review. Mr. Greene felt that time should be given for Ms. Ware to draft a decision, however; the Board can't change anything that's been determined by DEP.

It was the consensus of the Board to schedule a site visit on Saturday, July 16, 2016 at 10:00 a.m. Mr. Greene motioned to continue the public hearing to the July 27th meeting. Mr. Nangle seconded. Motion passed unanimously.

OLD BUSINESS:

Planning Board Initiatives/Status

Chairman Pease stated a meeting was held between Ms. Ware, Mr. Hamel and Mr. Thibault to discuss proposed revisions to the Subdivision Regulations and the open space plan. Ms. Ware noted the open space plan expired at the end of April and she hopes to have a rough draft by mid-July. The Town cannot apply for funding or State grants for open space land acquisitions or public parks unless the open space plan is up to date. In addition, Ms. Ware mentioned the EPA has issued an unfunded mandate to address stormwater in every community and everyone must comply with their requirements. Chairman Pease anticipates meeting again next month and Ms. Ware noted the revisions to the Subdivision Regs should be completed in the fall.

NEW BUSINESS:

133 Phineas Street & Lots on Flower Lane/Discussion of Rezoning R-1 to R-3

Ms. Ware referred to her submittal letter dated June 16th, which summarizes a brief history of the property located at 133 Phineas Street and the potential rezoning of the 20 acre parcel owned by the Skandalis family. In 1983 and 1984, this property and 2 properties at the end of Flower Lane (148 & 161) were rezoned from R-3 (multi-family) to R-1 (single-family). A short time later and after some litigation relative to the properties at the end of Flower Lane, the developer was able to construct 47 condo units. Ms. Ware added this property seems to be an island surrounded by R-3 zoning and in meeting with the Skandalis family, she suggested coming to the Board to discuss the potential rezoning. As noted under Chapter 40A, Section 5, zoning changes may be initiated by a number of different groups or individuals, including but not limited to:

PLANNING BOARD MEETING – June 22, 2016

the Board of Selectmen, the Zoning Board of Appeals, the Planning Board, by an individual owning land to be affected by change or adoption, by the request of registered voters or by a regional planning agency.

Chairman Pease acknowledged John Crowley in attendance (resident of the neighborhood and long serving member of the Zoning Board) and asked if he had any input on this zoning issue. Mr. Crowley indicated the condominium project was constructed back in the 1980's at the end of Flower Lane, which came to the surprise of the residents, as regardless of the underlying zoning all the surrounding properties were single-family homes. As a point of clarification, Mr. Crowley noted the court case involving the developer was dismissed and an agreement was reached by the parties involved in the litigation.

In further discussion, Mr. Crowley mentioned some residents got together to petition the Town for the zoning change to R-1 to avoid any future multi-family developments for this area and to go along with the existing neighborhood with the exception of the properties at the end of Flower Lane. Mr. Crowley questioned why the Planning Board would sponsor the zoning change for a private citizen and the implication would be that the Board supports the rezoning.

Vanessa Nicolopoulos addressed the Board and indicated her father, Louis Vlahakis, was one of the owners of the property, which is now owned by an aunt along with a number of cousins. In speaking for the family and researching the property, Ms. Nicolopoulos stated they felt they were victims of spot zoning and she mentioned that the family would like the same opportunity as other property owners and realizes the Town is in favor of open space, which would be given some consideration.

For full disclosure purposes, Chairman Pease noted the representatives have been before the Community Preservation Committee and added he agrees with Mr. Crowley's point that the Board recommends zoning changes that are in the best interest of the Town rather than for individual property owners. For clarification, Ms. Ware was not sure of the protocol for zoning changes and she advised the property owner to speak with the Board concerning the zoning. Mr. Thibault added it was not spot zoning, as it is all residential. Mr. Buxton suggested the family hire an attorney to pursue the zoning change, who can present their case to the various Boards rather than the Town getting involved and then it would be voted on at Town Meeting.

Valerie Vlahakis (a cousin) felt a precedent was set back when the zoning was changed and questioned the process that took place in considering the surrounding properties. Chairman Pease stated an attorney or representative can obtain 10 signatures of registered voters to file an article with the Town Clerk for Town Meeting. The Planning Board holds a public hearing and gives a recommendation to Town Meeting. In order for the zoning change to be approved, it requires a two thirds (2/3) vote at Town Meeting. Ms. Vlahakis inquired if the process is started by appearing before the Board tonight, which Chairman Pease indicated it does not.

PLANNING BOARD MEETING – June 22, 2016

Mr. Nangle agreed with Mr. Buxton's suggestion to hire an attorney to file the necessary paperwork and start the process. Ms. Ware asked if the Board is advising the family to file a citizen petition and hire an attorney, which Chairman Pease confirmed. For the Board's information, Mr. Hamel mentioned there were major revisions to the zoning map back in 1988 at which time a public hearing was held and in 2008 the Town adopted a digital zoning map, which also required a public hearing and then went to Town Meeting, so opportunity was given to any residents with questions of their zoning.

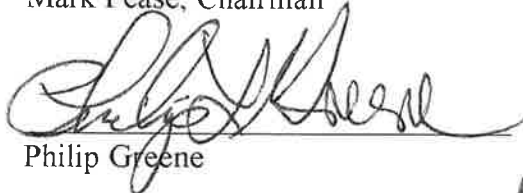
ADJOURNMENT: Mr. Nangle motioned to adjourn 8:20 p.m. Mr. Greene seconded. Motion passed unanimously.

THE DRACUT PLANNING BOARD

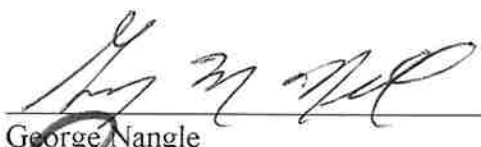
Mark Pease, Chairman



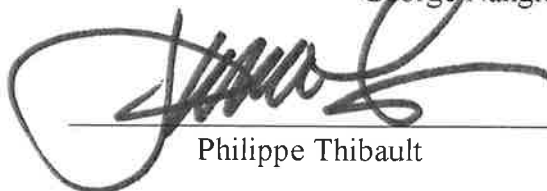
Robert Donnelly, Vice Chairman



Philip Greene



George Nangle



Philippe Thibault

/lw